

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

In re:) Case No. 22-22056-A-7
DAVID MICHAL,) FEC-5
)
 Debtor.)
)
)

PRETRIAL ORDER

1 On March 6, 2023, the court held a pretrial conference in this
2 matter. This order will control all pretrial procedure and the trial
3 of this matter.

4 **SECTION 1.0: DATES AND DEADLINES**

5	Pretrial Disclosures	May 4, 2023
6	Fed. R. Civ. P. 26(a) (3) (A) (i)-(ii)	
7	Exhibits	May 4, 2023
8	Alternate Direct Testimony	May 4, 2023
9	Trial Briefs	May 18, 2023
10	Motions in	May 18, 2023
11	Limine	
12	Objections to Admissibility of	May 18, 2023
13	Materials Identified under Rule	
14	26(a) (3) (A) (iii)	
15	Trial	
16	Commencement	June 1, 2023 at
17		9:00 a.m.
18	Continued dates	None
19	Plaintiff's time	3 hours
20	Defendant's time	3 hours
21	Location	Department A,
22		Courtroom 28,
23		Seventh Floor,
		United States
		Courthouse, 501 I
		Street, Sacramento,
		CA

24 **SECTION 2.0: SCOPE**

25 All of the issues are as follows: (1) does David Michal have 12
26 or more creditors; (2) how many creditors do the petitioning
27 creditors represent; and (3) is David Michal "generally not paying
28 such debtor's debts as such debts become due unless such debts are

1 the subject of a bona fide dispute as to liability or amount." 11
2 U.S.C. § 303(h) (1).

3 **SECTION 3.0: PRETRIAL DISCLOSURES**

4 No later than the date specified in section 1.0 of this order
5 and notwithstanding Local Bankruptcy Rule 9017-1, each party shall
6 file and serve the pretrial disclosures described in Federal Rule of
7 Civil Procedure 26(a) (3) (A) (i) and (ii).

8 **SECTION 4.0: ALTERNATE DIRECT TESTIMONY**

9 **4.1. Written Direct Testimony.** Excepting hostile/adverse
10 witnesses, each side's case in chief shall be made by succinct
11 written declaration executed under penalty of perjury. LBR 9017-
12 1(a)(3); *In re Adair*, 965 F.2d 777, 779 (9th Cir. 1992); *Regeneron*
13 *Pharmaceuticals, Inc. v. Merus N.V.*, 864 F.3d 1343, 1359 (Fed. Cir.
14 2017). Each fact or opinion shall be separate, sequentially numbered
15 and shall contain only matters that are admissible under the Federal
16 Rules of Evidence. It shall be the responsibility of the party
17 offering the declaration to ensure that the declarant is available
18 for examination at trial.

19 Said declarations shall be included as a separate tab in the
20 binder described in section 5.0 of this order and shall be provided
21 to opposing counsel and unrepresented parties as a part of the
22 evidence binder.

23 All cross-examination, rebuttal, sur-rebuttal, and impeachment
24 evidence shall be given by live testimony and via ZoomGov. LBR 9017-
25 1(c).

26 Except as otherwise provided in this section or as otherwise
27 ordered by this court, live testimony is not authorized.

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1 SECTION 5.0: EXHIBITS

2 **5.1. Evidence Binder.** No later than the date set forth in
3 section 1.0 of this order, each party shall lodge with chambers and
4 serve on opposing counsel and unrepresented parties an evidence
5 binder containing each of the documents or other exhibits (except
6 those offered solely for impeachment) that may be offered as evidence
7 at trial. A set of exhibits originally filed in support of the
8 motion, objection, opposition, or reply does not satisfy this
9 requirement. All evidentiary exhibits shall be placed in three-ring
10 binders.

11 **(a) Joint Exhibits.** The parties shall lodge evidentiary
12 exhibits jointly for the administrative convenience of the parties
13 and the court. By lodging the exhibits jointly, each party is deemed
14 to preserve all objections to the admissibility of the evidence in
15 the joint evidence binder. The binder shall contain a certification
16 by each attorney or unrepresented party that the exhibits are
17 submitted jointly. The cover of each binder shall contain the
18 following information: (1) the description on the cover of each
19 binder shall include the term "Joint Exhibits"; (2) the case name and
20 number; (3) the date and time of the trial; (4) a label designating
21 it as "Witness's Copy"; (5) the department in which the matter will
22 be heard; and (6) an instruction to the Clerk of Court that the
23 binder, exhibits, and documents are not to be filed but should be
24 directed to Department A chambers.

25 All exhibits shall be separated by tabs and pre-marked
26 alphabetically. The binder shall contain an index of the documents
27 and exhibits within the binder and shall include a description of
28 each document or other exhibit and its exhibit designation (e.g.,

1 "Exhibit A"). Exhibits within the binder shall be separated by tabs
2 and pre-marked. Each exhibit shall be internally sequentially
3 paginated, e.g. Exhibit B-1, B-2.

4 **(b) Meet and Confer.** Mr. Hasting shall take the lead in
5 organizing discussions with opposing counsel to coordinate the
6 exchange and ultimate lodging of joint exhibit binders.

7 **(c) Copy of Joint Exhibit to Debtor's Counsel.** Upon lodging the
8 final copy of the Joint Exhibits Charles Hastings shall provide
9 debtor's counsel one, or if she so requests more, copies of the Joint
10 Exhibits. Debtor's counsel shall promptly reimburse Charles Hastings
11 for the cost of the binder(s) provided to her.

12 **5.2. Chambers' Copies.** A party who lodges an evidence binder
13 under subsection 5.1 shall concurrently lodge two additional copies
14 of such binder to chambers that include all the identifying
15 information required in subsection 5.1 except for the label
16 "Witness's Copy," which label shall be replaced by the label "Judge's
17 Copy" on one additional copy and the label "Law Clerk's Copy" on the
18 other additional copy. Salient portions of each exhibit shall be
19 highlighted in yellow in only the Judge's Copy and Law Clerk's Copy.

20 **5.3. Impeachment Documents.** A party offering a document solely
21 for impeachment that is not included in the evidence binder shall
22 bring to trial a sufficient number of copies of the document. A
23 sufficient number of copies means one copy for each side of the
24 dispute plus two additional copies. This requirement does not apply
25 to entire deposition transcripts, but it does apply to deposition
26 excerpts.

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1 **SECTION 6.0: TRIAL BRIEF**

2 Trial briefs must be filed and served no later than the date
3 specified in section 1.0 of this order. A trial brief should include
4 a: (1) table of contents; (2) table of authorities; (3) short
5 statement of the facts; (3) summary of applicable law and
6 authorities, particularly any applicable Ninth Circuit case law; and
7 (4) conclusion, including a specific and succinct statement of the
8 relief sought. Without leave of court, trial briefs shall not exceed
9 25 pages.

10 **SECTION 7.0: MOTIONS IN LIMINE**

11 Motions in limine shall be filed and served no later than the
12 date set forth in section 1.0 of this order. Motions in limine shall
13 be set only for the date, time and place of trial. Such motions
14 shall comply with Local Bankruptcy Rule 9014-1, except that the
15 notice periods are shortened so that: (1) the motion may be filed and
16 served at least 14 days before the hearing date; (2) the opposition
17 to the motion may be filed and served at least 7 days before the
18 hearing date; and (3) any reply shall be presented orally at the
19 hearing. Service shall comply with applicable provisions of the
20 Federal Rules of Civil Procedure and Federal Rules of Bankruptcy
21 Procedure and, where possible, a courtesy copy of the motion or
22 opposition shall also be transmitted by means of immediate delivery,
23 e.g. a pdf file sent via email.

24 **SECTION 8.0: OBJECTIONS TO WRITTEN MATERIALS**

25 Objections to materials identified under Rule 26(a)(3)(A)(iii)
26 shall be filed and served not later than the date set forth in
27 section 1.0 of this order. Except for objections under Federal Rule
28 of Evidence 402 or 403, failure to file and serve such an objection

1 by the date specified herein shall be deemed a waiver unless excused
2 by the court for good cause. Fed. R. Civ. P. 26(a)(3)(B),
3 incorporated by Fed. R. Bankr. P. 7026.

4 **SECTION 9.0: TRIAL**

5 The trial of this matter shall commence on the date and time, at
6 the location, and each side is allocated the time set forth in
7 section 1.0 of this order. Time allotted each side includes all
8 aspects of that party's participation, including without limitation
9 opening statements, presentations of witnesses and evidence, cross-
10 examination of adverse witnesses, motions in limine, objections to
11 opposing party's evidence and closing argument.

12 **SECTION 10.0: TELEPHONIC APPEARANCES**

13 Telephonic appearances are not authorized for witnesses,
14 unrepresented parties or attorneys.

15 **SECTION 11.0: SETTLEMENT**

16 **11.1. Notify.** If the matter settles prior to the trial, the
17 parties shall immediately notify chambers telephonically at
18 (916) 930-4411.

19 **11.2. Memorialize.** Notwithstanding an informal agreement of
20 the parties to resolve a matter by settlement, trial will proceed as
21 scheduled unless the parties memorialize the settlement as set forth
22 in this section. To memorialize a settlement, the parties or their
23 attorneys shall either (1) recite and confirm the terms of the
24 settlement on the record at the scheduled trial date, or (2) execute
25 a written settlement agreement and file and serve a notice of
26 settlement. The notice of settlement shall identify the motion by
27 title, docket control number, and date of trial, and certify that a
28 settlement has been reduced to a written settlement agreement

1 executed by all parties.

2 **SECTION 12.0: UNCLAIMED EXHIBITS**

3 Unless the parties timely claim their exhibits, the Clerk may
4 dispose of unclaimed exhibits without further notice. LBR 7090-1.

5 **SECTION 13.0: MODIFICATION**

6 This scheduling order may be modified only with court approval
7 by motion. All such motions will be considered upon a showing of
8 good cause and due diligence. Fed. R. Civ. P. 16(b) (4), *incorporated*
9 by Fed. R. Bankr. P. 7016, 9014(c).

10 **SECTION 14.0: ADDITIONAL PROVISIONS**

11 Witnesses and clients may appear via ZoomGov. In the event any
12 witnesses are unwilling to voluntarily attend the trial, counsel may
13 offer deposition transcripts if it otherwise qualifies under Fed. R.
14 Bankr. P. 32 and other applicable law.

15 **SECTION 15.0: SANCTIONS**

16 Failure to comply with this scheduling order may result in
17 additional just orders including those authorized by Federal Rules of
18 Civil Procedure 16(f) and 37(b) (2) (A) (ii)-(vii). Fed. R. Civ. Proc.
19 16(f), 37(b) (2) (A) (ii)-(vii), *incorporated by* Fed. R. Bankr. P. 7016,
20 7037, 9014(c).

21 **Dated:** March 10, 2023

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23 _____
24 **Fredrick E. Clement**
25 **United States Bankruptcy Judge**

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SERVICE INSTRUCTIONS TO CLERK OF COURT

The Clerk of the Court is instructed to send the Order / Judgment or other court-generated document transmitted herewith to the parties specified below. The Clerk will send the Order / Judgment via the BNC or, if checked , via the U.S. mail.

The debtor(s), the attorney for the debtor(s), the bankruptcy trustee (if appointed in the case), and such other persons as are specified below:

Charles L. Hastings
4568 Feather River Dr., Suite A
Stockton, CA 95219

Patricia Wilson
405 Redcliff Drive, Suite 100
Redding, CA 96002